

***Remarks:***

Reconsideration of the application is respectfully requested in view of the foregoing amendments and following remarks. Claims 3, 5, 7, and 58-66 are pending in the application. No claims have been allowed. Claims 3, 5, 7, 58, 61, 65, and 66 are independent.

***Cited Art***

U.S. Patent No. 5,722,418 to Bro ("Bro") is entitled "Method for Mediating Social and Behavioral Processes in Medicine and Business through an Interactive Telecommunications Guidance System."

***Interview Summary***

Applicants thank the Examiner for his time during a telephonic interview on August 2, 2005. The interview was helpful, and Applicants encourage the Examiner to contact the undersigned attorney by telephone if any issues remain.

***Pursuit of Original Subject Matter***

Applicants make the amendments herein to expedite issuance of a patent. Applicants expressly reserve the right to pursue the original claims in a continuation or other application. The canceled claims have been canceled without disclaimer or prejudice to renewal.

***Additional Information Requested by Examiner***

The Action points to the materials provided on CD #1 as showing that Applicants' disclosure was in public use or being sold to the public by Applicants. As understood by Applicants, the technologies described in the materials on CD #1 included software

called “ApView” and were marketed by Aspen Tree Software, Inc., which was subsequently acquired by an entity now known as SHL Group plc.

The present application is assigned to and being prosecuted by Unicru, Inc. (formerly known as Decision Point Data, Inc. and Decision Point Systems) which was not involved in the development of the materials described on CD #1.

Applicants include herewith an IDS citing additional materials related to the technology associated with Aspen Tree Software. Materials originating from predecessor companies of Unicru, Inc. are also included. For the Examiner’s convenience, a brief history of Unicru (“Unicru – History”) is also included in the IDS.

***Patentability of Claims 3, 5, 7, 58, 59, 60, 61, 62, 63, 64, 65, and 66 over Bro  
under § 102(b)***

The Action rejects claims 3, 5, 7, and 58 as anticipated by Bro.

***Claim 3***

The Action rejects claim 3 over Bro. To expedite prosecution, Applicants have amended claim 3 as follows to include language directed to performance-driven item rotation:

wherein the first set of the plurality of questions to the individual has been subjected to performance-driven item rotation comprising at least one validation cycle during which at least one of the questions has been retained, at least one former question has been dropped, and at least one experimental question has been inserted.

For example, the Application at Page 32, lines 24 et seq. describe:

Performance-driven item rotation includes the practice of systematically retaining and deleting pre-hire content so that item content with predictive utility continues to serve as input for behavioral prediction with the current predictive model and items with little or no predictive utility are dropped from the content. New, experimental item content can be inserted into the content and response patterns can be recorded for analysis in the next validation cycle.

As understood by Applicant, Bro fails to teach such an arrangement. Accordingly, claim 3 and its dependent claims, 59-60, are allowable over Bro.

Support for new claim 59 can be found, for example, at page 7, lines 10 et seq. of the Application. Support for new claim 60 can be found, for example, at page 34, lines 4 et seq. and page 37, lines 4 et seq. of the Application.

### *Claim 5*

Claim 5 stands rejected over Bro. As amended claim 5 recites in part:

wherein the at least one post-hire outcome for the at least one job performance criterion comprises a predicted probability that a particular outcome value range for the at least one job performance criterion will be observed.

For example, the Application describes at Page 17, lines 2 et seq.:

A predictive model can generate a variety of prediction types. For example, a single value (e.g., “36 months” as a likely term of employment) can be generated. Or, a range of values (e.g., “36-42 months” as a likely range of employment term) can be generated. Or, a rank (e.g., “7 out of 52” as how this applicant ranks in tenure as compared to 52 other applicants) can be generated.

Further, probabilities can be generated instead of or in addition to the above types. For example, a probability that an individual will be in a certain range can be generated (e.g., “70% - 36 or more months”). Or, a probability of a certain value can be generated (“5% - 0 accidents”). Or, probability of membership in a group can be generated (e.g., “75% involuntarily terminated”).

The Action points to Bro at column 36, lines 14-16, which describe:

Spaced presentation of material enhances memory. The sooner an item is tested, the greater the probability that it will be correctly recalled, and hence the greater the probability that its recall will be strengthened.

The Action asserts that if an item tested is a predicted probability, then the predicted outcome is a predicted probability that a particular outcome value range will be observed.

The Action also asserts that post-hire is a change of condition. As understood by Applicants, the Action relies on the following passage in Bro at column 37, lines 30 et seq. as teaching the predicting language:

The software's 16D ability to approximate or guess the patent's or client's 50 choice or answer based upon prior performance provides the opportunity for more rapid response utilizing neural network and expert system software.

Applicants respectfully disagree. The claim recites "... based on correlations of the stored answers with answers to sets of questions by *other* individuals . . ." Further, the amendments suffice to distinguish Bro. Bro's description of the probability of whether a client will recall an item being tested fails to anticipate an arrangement involving a predicted probability that a particular outcome value range for the at least one job performance criterion will be observed.

Accordingly, claim 5 is allowable over Bro.

#### *Claim 7*

Claim 7 stands rejected over Bro. As amended claim 7 recites in part:

wherein the at least one post-hire outcome for the at least one job performance criterion comprises a predicted range of values for a continuous variable.

For example, the Application describes at Page 17, lines 2 et seq.:

A predictive model can generate a variety of prediction types. For example, a single value (e.g., "36 months" as a likely term of employment) can be generated. Or, a range of values (e.g., "36-42 months" as a likely range of employment term) can be generated. Or, a rank (e.g., "7 out of 52" as how this applicant ranks in tenure as compared to 52 other applicants) can be generated.

The Action points to Bro at column 13, lines 40-49, which describe:

The rationale of the system is that man is in a continuous state of growth and development. The system provides the motivation and reinforcement through continuous daily monitoring of each patient as he

works towards his basic goals for optimal health by maintaining prescribed regimens or goals. By this daily or periodic reinforcement and guidance utilizing interactive feedback, the system is able to maintain the organization and intervention between the physician, counselor, manager, the patient, or employee and his or her goals.

The Action asserts that because the paragraph describes “continuous state of growth and development” that it can be concluded that Bro anticipates the claim.

As discussed above with respect to claim 5, claim 7 also recites “. . . based upon correlations of the stored answers with answers to sets of questions by *other* individuals . . .” Further, mere mention of a continuous state of growth would not lead one of skill in the art to predicting a post-hire outcome for a job performance criterion, where the outcome comprises a predicted range of values for a continuous variable.

Accordingly, claim 7 is allowable over Bro.

#### *Claim 58*

Claim 58 stands rejected over Bro. As amended claim 58 recites in part:

wherein the first set of the plurality of questions to the individual has been subjected to performance-driven item rotation comprising at least one validation cycle during which at least one of the questions has been retained, at least one former question has been dropped, and at least one experimental question has been inserted.

As understood by Applicants, Bro fails to teach or suggest such an arrangement involving performance-driven item rotation. Accordingly, claim 58 is allowable over Bro.

The Action objects to claim 58 as a substantial duplicate of claim 3. Without addressing whether the two claims originally covered the same subject matter, Applicants point out that claim 58 includes additional language regarding involuntary termination not now found in claim 3.

*Claim 61*

Although the language in independent method claim 61 is not identical to that of claim 3, claim 61 includes the following language directed to performance-driven item rotation:

wherein the first set of the plurality of questions to the individual has been subjected to performance-driven item rotation comprising at least one validation cycle during which at least one of the questions has been retained, at least one former question has been dropped, and at least one experimental question has been inserted.

Accordingly, claim 61 and its dependent claims, 62-64, are allowable over Bro.

Support for new claim 62 can be found, for example, at page 39, lines 15 et seq. Support for new claim 63 can be found, for example, at page 31, lines 13 et seq. Support for new claim 64 can be found, for example, at page 34, lines 4 et seq.

*Claim 65*

New claim 65 includes language directed to successive validation cycles and recites in part:

wherein the model has been subjected to a plurality of successive validation cycles, the successive validation cycles validating effectiveness of the input answers to the model in accurately predicting the at least one post-hire outcome for the least one job performance criterion.

For example, the Application at page 34, lines 4 et seq. describes:

As successive validation cycles are completed and non-predictive item content is systematically replaced with predictive item content, overall validity improves. After multiple validation cycles, the result can be a shorter pre-hire questionnaire comprised of currently-performing predictive input and a few experimental items being validated in an on-going process for system evolution toward higher predictive accuracy.

As understood by Applicants, Bro does not teach such an arrangement involving successive validation cycles. Accordingly, claim 65 is allowable over Bro.

*Claim 66*

Claim 66 includes language directed to performance-driven item rotation and recites in part:

wherein the refining comprises retaining at least one of the items in the electronic job application, removing at least one of the items in the electronic job application, and inserting at least one experimental item into the electronic job application.

For example, the Application at page 32, line 21 et seq. describes:

Performance-driven item rotation includes the practice of systematically retaining and deleting pre-hire content so that item content with predictive utility continues to serve as input for behavioral prediction with the current predictive model and items with little or no predictive utility are dropped from the content. New, experimental item content can be inserted into the content and response patterns can be recorded for analysis in the next validation cycle.

As understood by Applicants, Bro fails to teach or suggest such an arrangement involving performance-driven item rotation.

Accordingly, claim 66 is allowable at this time.

***Request for Interview***

If any issues remain, the Examiner is formally requested to contact the undersigned attorney prior to issuance of the next Office Action in order to arrange a telephonic interview. It is believed that a brief discussion of the merits of the present application may expedite prosecution. Applicants submit the foregoing formal Amendment so that the Examiner may fully evaluate Applicants' position, thereby enabling the interview to be more focused.

This request is being submitted under MPEP § 713.01, which indicates that an interview may be arranged in advance by a written request.


***Conclusion***

The claims in their present form should now be allowable. Such action is respectfully requested.

Respectfully submitted,

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